

## **REMARKS**

Claims 1-17 are pending in the application. Claims 1-17 have been finally rejected. Each of the rejections set forth in the Office Action is addressed below:

### **I. Specification**

The amendment filed 3/7/06 was objected to under 35 U.S.C. 132(a) as allegedly introducing new matter in the disclosure, the Office Action indicating that the added paragraph was not supported by the original disclosure. In order to expedite prosecution of this application, Applicant has canceled the added paragraph without prejudice or disclaimer however it is believed that the original specification amply supported the added language as fully discussed below with respect to the amended claims.

### **II. Claim Rejections-35 U.S.C. 102**

Claims 1-17 have been finally rejected under 35 U.S.C. 102(b) as being anticipated by Sarno, U.S. Patent No. 6,024,641. Applicants respectfully traverse.

Sarno is patentably different in several critical respects from Applicants' claimed invention as discussed below. Sarno describes a lottery game wherein the player preselects or is randomly assigned numbers and/or characters that may be later selected as part of a winning combination i.e. the numbers and/or characters match those in the winning combination. By contrast, the user (i.e. the entrant) in Applicants' game of chance simply plays an entrant fee to receive a game record. The entrant does not select any game entry indicia. While the game record in Applicants' invention includes an entrant payout chart 58 which assigns a permutation to the entrant, the permutations are mathematically based on the number of participants (e.g. teams) in the game of chance and whose measured performance will be combined in groups in the game of chance

rather than playing numbers and/or characters randomly generated from a random generator. Sarno, 8: 1-5.

In addition, the assigned permutations, whether winning or not, do not “match” the predetermined performance criteria. Applicants’ game of chance is more than and patentably different from just selecting (or being assigned) numbers and/or characters which are later part of the winning combination of numbers and/or characters as in Sarno.

Moreover, as described on p. 12 of Applicants’ specification, the predetermined amount of the payout is a judgment call to be made by the administrator of the game of chance. “The administrator, as a business judgment, will establish payouts and payout amounts which encourage entrants to pay the entry fee in hopes of winning a substantial payout for a relatively low entry fee.” The payout amount is thus a fixed amount as now specifically claimed and known to the very first entrant. By contrast, the payout or jackpot amount in Sarno becomes larger as more players participate. Sarno, 6: 43-46.

Another patentable distinction between Sarno’s lottery and Applicants’ claimed method is that while the number of players in Sarno is unlimited (“[A] relatively unlimited number of players can play at any given time and for any given game. Indeed, in preferred embodiments, global participation in any game is possible.” Sarno, 5: 22-29), the number of game records and thus game entrants is limited to the number of permutations in Applicants’ claimed invention. This feature was already included in Claim 17 with the language “wherein the number of entrants in said game of chance is limited to the number of each said permutation.” Based on the Examiner’s comment in the “Response to Arguments” section of the Office Action that “limitations presented in the claims relative to the new matter were not considered”, it is believed that this claim

language was not considered. Applicants have now amended Claim 1 and further amended Claim 17 to include language that the “number of game records is limited to the number of permutations.” Ample support for this claim language as well as for the original language in Claim 17 may be found in the original Specification as filed. More specifically, the number of permutations in Applicants’ game of chance is mathematically determinable (Specification, 5: 18-6: 18) and the number of unique game records is limited to the number of permutations (Specification, 6: 16-18: “Thus, a total of 29,760 unique game records 50 provide every possible 3-team permutation for each week of National Football League games.”) As each entrant pays an entrant fee to receive a unique game record identifier (Specification. p. 14) that appears on each game record 50, the number of entrants is limited by the number of game records or permutations. That support for this claim language may be found in the original Specification means that it is not, and never has been, new matter. Accordingly, Sarno does not anticipate Applicants’ invention as now claimed. Based on the foregoing Amendments, reconsideration and withdrawal of the 102 based on Sarno is respectfully requested


In conclusion, Applicants respectfully submit that this Amendment, including the amendments to the claims and in view of the Remarks offered in conjunction therewith, are fully responsive to all aspects of the rejections tendered in the Office Action. Applicant respectfully submits that Claims 1-17 are now in condition for allowance. Applicant therefore earnestly solicits the issuance of a Notice of Allowance with respect to these claims.

If the Examiner has any comments or suggestions that could place this application in even better form, the Examiner is requested to telephone the undersigned attorney at the below-listed number.

If there are any additional fees incurred by this Amendment, including Extension fees, please deduct them from our Deposit Account No. 23-0830.

Dated: October 31, 2007

Respectfully submitted,

  
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